

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-6047

To be argued by
DAVID L. BIRCH

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

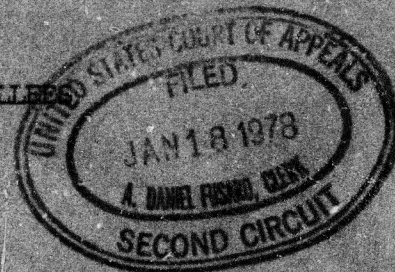
WALTER WOE (a pseudonym), by his mother and guardian WILMA WOE
(a pseudonym), on behalf of themselves and all others similarly
situated, Plaintiffs-Appellants,

-against-

CASPER W. WEINBERGER, individually and as Secretary of the
United States Department of Health, Education and Welfare; THE
UNITED STATES OF AMERICA; HUGH L. CAREY, individually and as
Governor of the State of New York; LAWRENCE C. KOLB, M.D.,
individually and as Commissioner of Mental Hygiene of the State
of New York; MORION B. WALLACH, M.D., individually and as
Director of Brooklyn State Hospital; and THE STATE OF NEW YORK,
Defendants-Appellees.

Caption Continued on Next Page

BRIEF FOR STATE APPELLEES



LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Appellees
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 438-3447

SAMUEL A. HIRSHONITZ
First Assistant Attorney General

DAVID L. BIRCH
Assistant Attorney General
of Counsel

-----X
YETTA YOE (a pseudonym), by ZELDA ZOE (a pseudonym), by her
mother and guardian, on behalf of themselves and all others :
similarly situated, Plaintiffs-Appellants, :

-against- :

LAWRENCE C. KOLB, M.D., as Commissioner of the Department of
Mental Hygiene of the State of New York; MORTON B. WALLACH, M.D., :
as Director of Brooklyn State Hospital, and all those similarly :
situated; MAURICE STEINBERG, M.D., as Director of the In-Patient :
Psychiatric Service of Downstate Medical Center, and all those :
similarly situated; ROBERT DICKES, M.D., as Chairman of the :
Department of Psychiatry of Downstate Medical Center, and all :
those similarly situated; GEORGE H. NICHOLS and ANTHONY J. :
DIGIOVANNA, as Justice of the Supreme Court of the State of :
New York, County of Kings, and all those similarly situated; :
ALBERT BESUNDER, as Director of the Mental Health Information :
Service of the State of New York, Second Appellate Division, and :
all those similarly situated, HUGH L. CAREY, as Governor of the :
State of New York; THE STATE OF NEW YORK; F. DAVID MATHEWS, as :
Secretary of the United States Department of Health, Education :
and Welfare; ELMER W. SMITH, as Regional Commissioner of the :
Social and Rehabilitation Service of the United States Department :
of Health, Education and Welfare for Region II, which includes :
the State of New York; and THE UNITED STATES OF AMERICA, :
Defendants-Appellees. :

-----X
KENNETH KOE, LAWRENCE LOE, MATHEW MOE and NATHAN NOE, (All
pseudonyms) on behalf of themselves and all others similarly :
situated, Plaintiffs-Appellants, :

-against- :

JOSEPH A. CALIFANO, JR., as Secretary of the United States
Department of Health, Education and Welfare; BERNICE BERNSTEIN, :
as Regional Commissioner of the United States Department of :
Health, Education and Welfare (Region II); and, THE UNITED :
STATES OF AMERICA, :

Defendants-Appellees. :
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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individually and as Commissioner of Mental Hygiene of the State :
of New York; MORTON B. WALLACH, M.D., individually and as :
Director of Brooklyn State Hospital and THE STATE OF NEW YORK, :
Defendants-Appellees. :

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-against- :

LAWRENCE C. KOLB, M.D., as Commissioner of the Department of :
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as Director of Brooklyn State Hospital, and all those similarly :
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Psychiatric Service of Downstate Medical Center, and all those :
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as Regional Commissioner of the United States Department of :
Health, Education and Welfare (Region II); and, THE UNITED :
STATES OF AMERICA, :

Defendants-Appellees. :
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BRIEF FOR STATE APPELLEES

Statement

Plaintiffs-appellants appeal from a decision of the United States District Court for the Eastern District of New York (Neaher, J.) dated January 13, 1977 dismissing the Koe v. California action (entitled Koe v. Mathews below) on the ground of mootness.

Question Presented

Is the distinction between patients of accredited and non-accredited hospitals drawn and maintained by Congress and not the State of New York?

Facts

In August, 1975 plaintiffs instituted the first of these actions challenging the system of mental hospital care in New York State. In an opinion dated January 14, 1976, reported at 408 F. Supp. 419, the District Court sustained, as against a motion to dismiss, plaintiffs' complaint insofar as it alleged a right to treatment.*

*Plaintiffs' appeal of part of Judge Neaher's order was denied by this Court in Woe v. Weinberger, 556 F. 2d 563 and 562 F. 2d 40.

Koe v. Mathews was then filed, alleging that residents of Pilgrim State Hospital over the age of 65 were denied due process and equal protection because they had lost their \$25/month SSI payments when Pilgrim lost its reccreditation.

In a decision dated January 13, 1977, the District Court, inter alia granted the federal defendants' motion to dismiss in Koe v. Mathews on the ground that HEW had agreed to continue making the \$25 payment to the residents of Pilgrim.

Pilgrim Psychiatric Center was reaccredited in April, 1976 for one year and again in April, 1977 for another year.

ARGUMENT

THE DISTINCTION BETWEEN PATIENTS
OF ACCREDITED AND NON-ACCREDITED
HOSPITALS OF WHICH APPELLANTS
COMPLAIN IS DRAWN BY CONGRESS AND
IS NOT MAINTAINED BY THE STATE.

Although various headings of these consolidated cases name State defendants, as appellants state in their brief, the distinction drawn between residents of accredited and non-accredited State hospitals for the purpose of the

Supplemental Security Income Program (SSI) was drawn by Congress and is enforced by the federal government. The State defendants thus express no opinion on the distinction.

In any event, Pilgrim Psychiatric Center has been reaccredited.

CONCLUSION

THE ORDER OF THE DISTRICT COURT
SHOULD BE AFFIRMED.

Dated: New York, New York
January 17, 1978

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Appellees

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DAVID L. BIRCH
Assistant Attorney General
Of Counsel

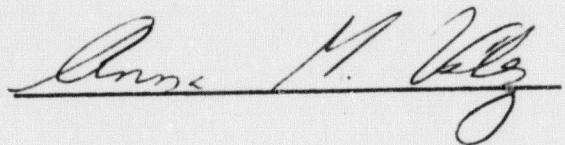
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ANNA M. VELEZ, , being duly sworn, deposes and
says that she is employed in the office of the Attorney
General of the State of New York, attorney for State Appellees
herein. On the 18th day of January, , 1978 , she
served the annexed upon the following named persons :

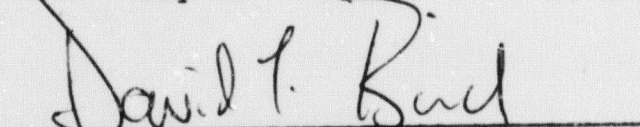
MORTON BIRNBAUM, M.D.
Attorney for Appellants
225 Tompkins Avenue
Brooklyn, N.Y. 11216

HON. DAVID G. TRAGER
U.S. Attorney
Eastern District of New York
225 Codman Plaza East
Brooklyn, N.Y. 11201
Att: Cyril Hyman
Assistant U.S. Attorney
Deputy Chief, Civil Division

Attorneys in the within entitled action by depositing
a true and correct copy thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by
the Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said Attorneys at the
addresses within the State designated by them for that purpose.



Sworn to before me this
18th day of January , 1978


Assistant Attorney General
of the State of New York

